

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action mailed December 31, 2008, which has been reviewed and carefully considered.

Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-14 are pending in the application. Claim 1 is independent. By means of the present amendment, the claims are amended including for better conformance to U.S. practice, such as changing "characterized in that" to --wherein--, and amending dependent claims to begin with "The" as opposed to "A". By these amendments, the claims are not amended to address issues of patentability and Applicants respectfully reserve all rights under the Doctrine of Equivalents. Applicants furthermore reserve the right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or continuing applications.

In the Office Action, claims 1, 2, and 6-14 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,508,817 to Altshuler

("Altshuler") in view of U.S. Patent No. 6,755,849 to Gowda ("Gowda"). Further, claims 3 and 4 are rejected under 35 U.S.C. §103(a) over Altshuler in view of Gowda and further in view of U.S. Patent No. 6,662,054 to Kreindel ("Kreindel"). Finally, claim 5 is rejected under 35 U.S.C. §103(a) over Altshuler in view of Gowda and further in view of U.S. Patent No. 6,325,792 to Swinger ("Swinger"). These rejections are respectfully traversed. It is respectfully submitted that claims 1-14 are allowable over Altshuler in view of Gowda alone and in view of any combination of Kreindel and Swinger for at least the following reasons.

Altshuler is directed to treating dermatologic problems and discloses a head that may include an optical waveguide having a first end to which EM radiation appropriate for treating the condition is applied. The waveguide also has a skin-contacting second end opposite the first end. It is admitted that Altshuler fails to teach a pressure gage for measuring pressure inside a recess (see page 2, section 3 of the Office Action).

The Office Action relies on Gowda, col. 12, lines 12-16 as teaching "vacuum means for lowering a pressure inside the recess" as for example recited in claim 1. However, it is respectfully

submitted that reliance on a Gowda is misplaced. A close examination of Gowda, reveals that its pressure transducer and a pressure modulator are connected to the cooling fluid circuit of the apparatus and their use is described at Col. 12, lines 17-20 as follows:

During operation of such an apparatus, fluid flow can be stopped (during therapy or at intervals in between therapeutic pulses), and a series of induced pressure changes can be imparted to the fluid with the pressure modulator.

Thus, while Gowda discusses fluid flow control and inducing fluid pressure. Any discussion of "lowering a pressure inside the recess" or "measuring a pressure inside the recess" as in claim 1 is absent from Gowda.

It is respectfully submitted that the apparatus of claim 1 is not anticipated or made obvious by the teachings of Altshuler in view of Gowda. For example, Altshuler in view of Gowda does not teach, disclose or suggest, an apparatus that amongst other patentable elements, comprises (illustrative emphasis added) "a radiation delivery head having a source of electromagnetic radiation; an emission window which is optically coupled to the source of electromagnetic radiation and is able to emit the

electromagnetic radiation; a recess which is open on one side; and vacuum means for lowering a pressure inside the recess, wherein the apparatus further comprises a pressure gauge for measuring a pressure inside the recess" as recited in claim 1.

The present invention of claim 1 is directed to an electromagnetic radiation delivery apparatus for skin treatment. The use of the term "vacuum" implies that air pressure is at issue. Use of fluids and control of fluid pressure in Gowda is not analogous to the "vacuum means for lowering a pressure inside the recess" recited in claim 1 and does not, in combination with Altshuler, make claim 1 obvious to these skilled in the art. Each of Kreindel and Swinger are introduced for allegedly showing elements of the dependent claims and as such, do nothing to cure the deficiencies in each of Altshuler and Gowda.

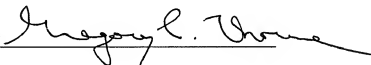
Accordingly, it is respectfully submitted that independent claim 1 is allowable, and allowance is thereof respectfully requested. Claims 2-14 respectively depend from claim 1 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims.

Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

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